

Answers to Frequently Asked Compulsory School Attendance Questions

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**Elizabeth Burmaster
State Superintendent
Department of Public Instruction
Madison, Wisconsin**

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Introduction

This document outlines the rights and responsibilities related to attendance in Wisconsin public schools. As part of the chapter entitled Compulsory School Attendance Enforcement, the responsibilities of both parents/guardians and public school officials to compel students to attend school on a regular basis are described. Finally, this document outlines the provisions under which students' rights to attend public schools may be either voluntarily or involuntarily forfeited.

This document organizes the above information in a question and answer (Q and A) format. The answers provided are formulated through reviews of case law, Attorney Generals' opinions, and DPI policies and procedures. The statutory citations are found in three primary sections. Compulsory School Attendance Enforcement is located in §118.16, Wis. Stats. School Board Powers related to suspension and expulsion of students from public schools is located in §120.13, Stats. Finally, the reference to free public education is located in article X, section 3 of the Wisconsin Constitution.

We hope that this document can provide answers to the questions the reader has related to compulsory school attendance, attendance enforcement, and student discipline. It is not uncommon for the interpretation of statutes and the application of those same laws to be viewed quite differently by interested parties. When that occurs it is necessary to attempt to achieve resolution of those disputes at the local level. Both constitutional and statutory powers of the state superintendent and the department are extremely limited in serving as an avenue of appealing enrollment, attendance enforcement, and student discipline cases. This is due in large part to our state's strong reliance on a system of "local control." While department staff can attempt to clarify options available, ultimately parties will need to attempt negotiation of disputes through local channels.

Additional resources, including web sites of interest, are referenced in the Table of Contents that follows.

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Compulsory Attendance

1. Are students required to stay in a private or public school until age 18?

Yes, students are required to stay in school until they graduate or until the end of the school term, quarter or semester during which they turn 18 years of age. §118.15(1)(a), Wis. Stats. Instruction in a home-based private educational program (home schooling) that meets the criteria in §118.165(1), Stats., may be substituted for attendance at a public or private school. §118.15(4), Stats.

2. When can students leave school even though they have not graduated?

Students may leave school at the end of the school term, quarter or semester during which they turn 18 years of age. §118.15(1)(a), Stats. Because there is juvenile court jurisdiction under the Wisconsin Statutes only until age 18, it is unlikely that a student leaving on his/her 18th birthday (if it occurs before the end of the term) can be referred to court.

3. What options are available to students who wish to be excused from regular school attendance under §118.15?

The exceptions to compulsory attendance include:

- A student who is 16 years of age or older and a child at risk as defined in §118.153, Stats. may request and a school board is required to allow that student to attend, in lieu of high school or on a part-time basis, a technical college if the student is working toward a high school diploma. §118.15(1)(b), Stats. Written parental permission is required.
- A student who is 16 years of age or older may be excused by the school board from regular school attendance if the student and his/her parent or guardian agree, in writing, that the child will participate in a program or curriculum modification as listed under §118.15(1)(d), Stats., leading to the child's high school graduation. §118.15(1) (c), Stats.
- A student who is 17 years of age or older may, with the written permission of his/her parents, be excused by the school board from regular attendance to participate in a program or curriculum modification leading to the student's high school graduation or to a high school equivalency diploma under §115.29(4). §118.15(1)(c)2., Stats.
- A student who is 17 years of age or older and who began a program leading to a high school equivalency diploma in a secured correctional facility, juvenile detention center, or county jail may request and the school board shall allow the student to continue at the technical college. §118.15(1)(cm), Stats.

- Any child's parent or guardian, or the child if the parent or guardian is notified, may request the school board, in writing, to provide the child with program or curriculum modifications, including but not limited to:
 - a. Modifications within the child's current academic program.
 - b. A school work training or work study program.
 - c. Enrollment in any alternative public school or program located in the school or district in which the child resides.
 - d. Enrollment in any nonsectarian private school or program located in the school district in which the child resides, which complies with the requirements of 42 USC 2000d. Enrollment of a child under this subdivision shall be pursuant to a contractual agreement which provides for the payment of the child's tuition by the school district.
 - e. Home-bound study, including nonsectarian correspondence courses or other courses of study approved by the school board or nonsectarian tutoring provided by the school in which the child is enrolled.
 - f. Enrollment in any public educational program located outside the school district in which the child resides. Enrollment of a child under this subdivision may be pursuant to a contractual agreement between school districts. §118.15(1)(d), Stats.

The school board must send the parent a decision in writing and if it denies the request, the reason for denial must be provided.

4. May parents home school their children instead of sending them to school?

Yes. A family wishing to home school their child(ren) must register each year with the Department of Public Instruction. §115.30(3) On or before each October 15, each administrator of a home-based private educational program shall submit, on forms provided by the department, a statement of the enrollment on the third Friday of September in the elementary and secondary grades under his/her jurisdiction to the department. A home schooling registration form may be obtained by calling 608/266-5761. §118.15(4) and §118.165(1), Stats.

5. Can a school district refuse to enroll a student in school?

The Wisconsin Constitution guarantees a free education for children ages 4 through 20* who have not graduated** from high school. The requirement of the local school district to provide free public elementary and secondary education to resident children is stated in §121.77(1), Stats. as follows: "Every elementary school and high school shall be free to all pupils who reside in the district." For school attendance purposes, a child who resides away from his/her parents is considered a resident of the school district in which the child actually resides rather than the one in which the parents live, so long as the child's primary purpose for residing away from his/her parents is other than to attend the schools of the district in which the child actually resides. See *State ex rel. School District No. 1 of Waukesha v. Thayer*, 74 Wis. 48 (1889).

**** A High School Equivalency Diploma (HSED) is not considered high school graduation for these purposes.**

A school district may deny education services if a student is not a resident of the district or if he/she moves without his/her parent(s) to the district primarily for educational purposes. In addition, no school district is required to enroll a student during the term of his or her expulsion from another school district. §119.25 and §120.13(1)(f), Stats.

***A local education agency (LEA) must make available a free appropriate public education (FAPE) to children with disabilities who are at least 3 years old but not yet 21 years old and who have not graduated from high school and, for the duration of a school term, any person who becomes 21 years old during that school term and who has not graduated from high school. §115.76(3) Stats.**

In other words, the right to FAPE for a child with a disability who has not yet graduated from high school continues until the end of the school term in which he or she turns 21. “School term” is defined as the time beginning with the first school day and ending with the last school day that the LEA’s schools are in operation for the attendance of pupils during the school year, other than for the operation of summer classes.

A High School Equivalency Diploma (HSED) is not considered high school graduation for these purposes.

6. Are the parents of expelled students liable under compulsory attendance law?

There is no law that exempts a child who has been expelled from the requirement to attend school under §118.15(1)(a), Stats. However, as a practical matter, it is unlikely that a prosecutor would bring such a case against a parent of an expelled student. Alternative options include enrollment in a private school, correspondence school, technical college or home-based private educational program (home schooling).

7. Are technical colleges required to enroll students who are expelled?

No, however attendance is permitted under §38.22(1) and (1s), Stats., subject to approval of the local technical college. For additional information, please see *Contracting With Technical Colleges* at www.dpi.state.wi.us/dpi/dlsis/let/qandapi5.html.

8. If the parents move, may a parent opt to keep a child in the school in which he/she began the school year?

§121.84(1)(a)2 Stats. requires a school board to allow a student who is enrolled in its district and is a resident of the district on the third Friday in September or the second Friday in January and was enrolled at least 20 school days in the current school year to complete the school year without payment of tuition, even if the student moves out of the district during the school year and is no longer a resident.

§121.84(1)(a)1 Stats. permits a school board to allow a pupil who was enrolled in and a resident of the school district at the beginning of the school year to complete the school year at the school he or she is attending without payment of tuition, even though the pupil is no longer a resident of the district.

§121.84(1)(b) Stats. requires the school board to allow a student who has gained 12th grade status in a high school under its jurisdiction and is a resident of the district when he or she gained 12th grade status, to complete 12th grade at the high school without payment of tuition even though the student is no longer a resident of the district. Students may also be eligible to attend a non resident district under the open enrollment program. See www.dpi.state.wi.us/dpi/dfm/sms/psctoc.html web site, §118.51 and §118.52 Stats.

Generally, the school district of residence is not responsible for transportation beyond the school district's boundaries. The Department of Public Instruction has suggested that inter-district cooperation may be appropriate to provide transportation under these circumstances. However, the law does not clearly define transportation rights and responsibilities in this area.

In the case of a child with a disability, the school district where the child began the school year and continues to attend has the responsibility to insure that the child has a Free Appropriate Public Education (FAPE) available. Although the state law does not explicitly address this, when special transportation is required by the child's IEP, the district of attendance would also appear to be responsible to insure that it is provided as part of ensuring FAPE. Legislative clarification may be needed to more fully address this area.

Compulsory School Attendance Enforcement

1. At what age is compulsory attendance enforced?

Any person having under his/her control a child who is between the ages of 6 and 18 years and has not graduated from high school shall cause the child to attend school regularly during the full period and hours, religious holidays excepted, that the public or private school in which the child should be enrolled is in session until the end of the school term, quarter or semester of the school year in which the child becomes 18 years of age. §118.15(1)(a) Stats.

2. Who determines if an absence is excused?

The school board must establish a written policy specifying the reasons for which pupils may be permitted to be absent from school. §118.16(6)(a) Stats.

However, parents may excuse their child's absence in writing before the absence. A child may not be excused for more than 10 days in a school year under this provision. §118.15(3)(c). Stats.

The board may excuse children who are temporarily not in proper physical or mental condition to attend school but can be expected to return to school upon termination or abatement of the illness or condition. §118.15(3)(a) Stats. An excuse under this paragraph shall be in writing and shall state the time period for which it is valid not to exceed 30 days.

3. What is truancy and habitual truancy?

A student is considered truant if he/she is absent without an acceptable excuse for all or part of one or more days during which school is held. A student qualifies to be habitually truant when he/she is absent without an acceptable excuse all or part of five or more days in a school semester. §118.16(1)(a) and (c), Stats.

4. How is "part of a day" defined?

Each school district determines what constitutes "part of a day." A district might define "part of a day" as a few minutes tardy, missing one hour or missing half of a day.

5. What must the school do if a student is truant?

The school attendance officer must notify the parent(s) and direct the parent to return the child to school or provide an excuse. Notification must occur by the end of the second day after receiving a report of the unexcused absence. §118.16(2)(c), Stats.

If a student misses part or all of five (5) or more days without an acceptable excuse in a school semester, the student may be considered to be “habitually truant” and a truancy referral may be made by the school against the student under §118.16(5), Stats., to the juvenile court intake worker or municipal court.

6. What must the school do when a student becomes habitually truant?

The school attendance officer is required to notify the pupil’s parent or guardian by registered or certified mail that the student is habitually truant. The notice shall inform the parent or guardian of his/her responsibility to cause the child to attend school regularly, that the parent or guardian may request a program or curriculum modification under §118.15(1)(d), Stats., and that the pupil may be eligible for enrollment in a program for children at risk under

§118.153(3), Stats. The notice shall also request that the parent/guardian meet with appropriate school personnel at a specified date, time and place. The meeting shall be scheduled for a day, within five school days of the notice, unless the parent/guardian consents to five additional school days. The notice shall also include a statement of the penalties under §118.15(5), Stats. that may be imposed on a parent or guardian if he/she fails to cause the child to attend regularly. §118.16(2)(cg), Stats.

7. What steps must schools take to provide educational services to habitually truant children before the case is referred to the courts?

If a student misses part or all of five or more days without an acceptable excuse, the student may be considered to be “habitually truant” and truancy proceedings may be started by the school under §118.16(5), Stats. Prior to referring the matter to juvenile, municipal, or teen court under §938.13(6), §118.16(6), or §118.163(1m), Stats., the school must document that they have done all of the following within the school year during which the truancy occurred:

- (a) Met with the student’s parent or guardian to discuss the student’s truancy or have attempted to meet with the student’s parent or guardian and received no response or were refused. §118.16(5)(a), Stats.
- (b) Provided an opportunity for educational counseling to the student to determine whether a change in the student’s curriculum would resolve the student’s truancy and have considered curriculum modifications under §118.15(1)(d), Stats. §118.16(5)(b), Stats.
- (c) Evaluated the student to determine whether learning problems may be a cause of the student’s truancy and, if so, have taken steps to overcome the learning problems. Evaluation is not necessary if tests administered within the last year indicate that the student is performing at grade level. §118.16(5)(c), Stats.
- (d) Conducted an evaluation to determine whether social problems may be a cause of the student’s truancy and, if so, have taken appropriate action or made appropriate referrals. §118.16(5)(d), Stats.

If the parent does not attend the meeting, and the student was not in school for counseling or evaluation, the school may provide documentation of the nonparticipation in lieu of completing the requirements under (a) through (d) above. §118.16(5m), Stats.

8. What could happen to parents if their children do not attend school?

For the first offense, parents and guardians of students who are truant could be fined up to \$500 or imprisoned 30 days. §118.15(5)(a)1. a., Stats. For the second and subsequent offense, the fine cannot exceed \$1,000 and/or imprisonment for 90 days. They could also be required to perform community service, §118.15(5)(a)2., Stats, participate in counseling at their own expense and/or attend school with the truant child. §118.15(5)(am) & 118.163(2)(k) & §938.342(1m)(a), Stats. In addition, parents and guardians can be held all or partially responsible for any fines that their child receives. §118.163(1m)(b) and §938.342(1d)(b), Stats. They can also be responsible for the cost of any counseling or for supervised work.

§118.163(2)(b) and 938.342(1g)(b), Stats. Also, any adult who knowingly contributes to truancy can be found guilty of a Class C misdemeanor under §948.45, Stats. Some exceptions exist for parents or guardians of children under Learnfare. §49.26(1)(h), Stats.

9. What could happen to a student who doesn't attend school and is referred to juvenile or municipal court?

Municipal courts (in cities, villages, towns, or counties) may order the following if the child is determined, by the court, to be habitually truant:

- Suspension of the student's drivers license for not less than 30 days nor more than one year, §118.163(2)(a) and §938.342(1g)(a), Stats.
- Participation in counseling or supervised work (community service) program, §118.163(2)(b) and §938.342 (1g)(b), Stats.
- Home detention during specific hours, §118.163(2)(c) and §938.342(1g)(c), Stats.
- Attendance in an education program as described in §938.34(7d), §118.163(2)(d) and §938.342(1g)(d), Stats.
- Order the Department of Workforce Development to revoke the student's work permit, §118.163(2)(e) and §938.342(1g)(e), Stats.
- Participation in a teen court program, §118.163 (2)(f) and §938.342(1g)(f), Stats.
- School attendance, §118.163(2)(g) and §938.342(1g)(g), Stats.
- A forfeiture (fine) of not more than \$500 plus court costs, §118.163(2)(h) and §938.342(1g)(h), Stats.
- Any other reasonable conditions, including a curfew, restrictions as to places the student may be, or restrictions on associating with other children or adults, §118.163 (2)(i) and §938.342(1g)(i), Stats.
- Placement of the student on formal or informal supervision, §118.163(2)(j) and §938.342(1g)(j) Stats.
- The student's parent, guardian or legal custodian to participate in counseling at their own expense or to attend school with the student, or both, §118.163(2)(k) and §938.342(1m)(a), Stats.

The juvenile court may order the following if the child is determined, by the court, to be habitually truant:

- Counseling of the student, the parent, guardian or legal custodian, §938.34(1), Stats.
- Placement of the student on formal supervision, including supervision and home detention for not more than 30 days under rules of supervision, §938.34(2), Stats.
- Participation in a teen court program, §938.34(2m), Stats.
- Place the student in the home of the parent or relative, with a non-relative for up to 30 days, in a foster home, treatment foster home, group home, or child caring institution, §938.34(3), Stats.
- Electronic monitoring, §938.34(3g), Stats.
- Transfer the student's legal custody from the parent to a relative, to the county department or to a licensed child welfare agency, §938.34(4), Stats.
- Participation in a supervised work or community service program, §938.34(5g), Stats.
- Participation in a community service (youth corps) work program, §938.34(5m), Stats.
- Provision of special treatment or care as identified in an evaluation under §938.295, Stats.
- Development and implementation of an integrated service plan under §46.56, Stats. §938.34(6m), Stats.
- Outpatient alcohol or drug treatment or education, §938.34(6r), Stats.
- Drug testing, §938.34(6s), Stats.
- Attendance in an educational program including disclosure of the pupil's records to the supervising agency. §938.34(7d), Stats.
- Participation in a wilderness challenge program or other experiential education program, §938.34(7g), Stats.
- Participation in a juvenile offender education program, §938.34(7n), Stats.
- Vocational assessment, counseling or training, §938.34(7r), Stats.
- Participation in a day treatment program, §938.34(7w), Stats.
- Any of the above items stayed and held in abeyance pending successful completion of other requirements. §938.34(16), Stats. For example, the court might stay an order of out-of-home placement on the condition that the student attend school every day.
- The juvenile court may also order all of the options listed for the municipal court if the juvenile court finds that the student's truancy is intentional. §938.345(2), Stats.

10. When may a school district stop enforcing the truancy provisions as to a particular student?

- (a) At the end of the term, quarter, or semester in which the student turns 18 years old.
- (b) When the district receives documentation that the student no longer resides in the district or has enrolled in another public school, private school, or home-based education program.

11. Do students have the right to make up exams missed because of an unexcused absence or work missed because of a suspension?

Yes. No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences or suspensions from school. The school's attendance policy shall specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations and complete any course work missed during a period of suspension. §118.16(4)(b), Stats.

12. May districts lower students' grades because of unexcused absences?

It is important for schools to have a clear policy with objective criteria for reducing grades. Credit cannot be denied on the basis of unexcused absences only. The school's attendance policy shall specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations and complete any course work missed during a period of suspension. §118.16(4)(b), Stats.

Also, the school board may establish policies which provide that as a consequence of a pupil's truancy the pupil may be assigned to detention or to a supervised, directed study program. The program need not be held during the regular school day. The policies under this paragraph shall specify the conditions under which credit may be given for work completed during the period of detention or assignment to a supervised, directed study program. A pupil shall be permitted to take any examinations missed during a period of assignment to a supervised, directed study program. §118.16(4)(c), Stats.

13. May districts fail students who have several unexcused absences?

Failure that results in the denial of credit cannot be based solely on unexcused absences.

14. What happens if the district attorney, municipal attorney, or corporation counsel does not choose to proceed with a truancy case?

Nothing. The district attorney, municipal attorney, or corporation counsel has the legal authority to determine if the case will proceed or not. §938.25(1), Stats.

15. What can concerned citizens do if they see students who are clearly under the age of compulsory attendance out of school?

They may contact the school or law enforcement.

16. May parents or other adults be fined if they contribute to truancy?

Yes. Under §118.15(5), Stats., if a parent or adult has been found to have contributed to the truancy of a child, in violation of §948.45, Stats., they may be penalized as follows:

- For the first offense, by a fine of not more than \$500 or imprisonment for not more than 30 days or both.
- For a second or subsequent offense, by a fine of not more than \$1,000 or imprisonment for not more than 90 days or both.
- The court may require the person to perform community service work in lieu of the penalties.
- The court may order the person to participate in counseling at the person's own expense or to attend school with his/her child, or both.

If the parent or other adult, proves that he/she is unable to comply with the law because of the disobedience of the child, the action shall be dismissed and the matter referred to children's court.

17. What is a truancy plan?

At least once every four years, the school district administrator of the school district which contains the county seat is required to convene a committee to review and make recommendations to the school boards of all of the school districts in the county on the school districts' truancy plan. The committee is required to consist of certain members including representatives of each of the county's school districts, law enforcement, the office of the district attorney, the circuit court, the county department of social/human services, juvenile court intake, parents and community members. The committee shall write a report that addresses factors that contribute to truancy in the county and a description of any state statutes, municipal ordinances or school, social services, law enforcement, district attorney, court or other policies that contribute to or inhibit the response to truancy in the county.

Each school board is required to adopt a truancy plan that includes:

- Procedures to be followed for notifying the parents or guardians of the unexcused absence.
- Plans and procedures for identifying truant children of all ages and returning them to school.
- Methods to increase awareness and involvement of the public in truancy.
- The immediate response to be made by school personnel when a truant child is returned to school.
- The types of truancy cases to be referred to the district attorney and the time periods for response from the district attorney.
- Plans and procedures to coordinate the responses to the problem of habitual truants with public and private social service agencies.
- Methods to involve the truant child's parent or guardian in dealing with and solving the child's truancy.

The plan is required to be revised and approved at least once every two years. §118.162, Stats.

Dropouts

1. When can a student drop out of school?

Students must attend school until the end of the school term, quarter or semester of the school year in which the student becomes 18 years of age. §118.15(1)(a), Wis. Stats.

2. What is the definition of a dropout?

Under §118.153(1)(b), Stats., “dropout” means a child who ceased to attend school, does not attend a public or private school, technical college or home-based private educational program on a full-time basis, has not graduated from high school and does not have an acceptable excuse under §118.15(1)(b) to (d) or (3), Stats.

3. How are dropouts accounted for and reported in the School Performance Report?

All students in grades 7 through 12 who fit the definition of dropout and do not return to school by the third Friday in September of the following year should be reported in the *School Performance Report*.

For additional information on the *School Performance Report* please contact the Department of Public Instruction at 608/267-3166.

4. Is there a relationship between dropouts and habitual truants?

Yes. A habitual truant is a student who had five unexcused absences in one semester.

§118.16(1)(a), Stats. It is logical, therefore, to assume that a dropout has missed five days of school without an excused absence. In other words, not all habitual truants become dropouts, but all dropouts were habitual truants.

Suspension and Expulsion

District employees responsible for discipline are strongly encouraged to use the Disciplinary Action Advisor to guide them through the discipline process and to access sample forms. This electronic tool can be accessed at www.dpi.state.wi.us. Click on Disciplinary Action Advisor.

1. What is the school district's authority to suspend a pupil?

The authority of a school district to suspend a pupil is found under §120.13(1)(b) and (bm), Wis. Stats. The law permits a school district administrator or any principal or teacher designated by the school district administrator to suspend a pupil

1. For disobeying school rules.
2. For conveying any threat or false information concerning an attempt or alleged attempt being made or to be made to destroy school property by explosives.
3. For conduct while at school or under the supervision of a school authority which endangers the property, health or safety of others.
4. For conduct while not at school or while not under the supervision of school authority which endangers the property, health or safety of others at school or under the supervision of a school authority or endangers the property, health or safety of any employee or school board member in the pupil's district. Conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property. The law requires suspension if the student possessed a firearm while at school or under the supervision of the school authority.

2. For how long may a student be suspended from school?

A student may be suspended for up to five school days. However, if a notice of an expulsion hearing has been sent, the pupil may be suspended for up to 15 consecutive school days. §120.13(1)(b), Stats.

Note: Special provisions govern the suspension or expulsion of a student with special education needs. For review of these provisions, see the federal special education regulations, 34 CFR 300.519 through 300.529. The Department of Public Instruction (DPI) has also developed a unique internet-based system to guide schools through the discipline requirements of students.

This tool can be accessed at the DPI home page: www.dpi.state.wi.us. Click on "Disciplinary Action Advisor."

3. May a suspension be appealed?

A parent or pupil may, within five school days following the commencement of a suspension, have a conference with the school district administrator or his/her designee. The designee may not be the principal, an administrator or a teacher in the child's school. If the

school district administrator or his/her designee finds that the child was suspended unfairly or unjustly, or the suspension was inappropriate given the nature of the offense, or the child suffered undue consequences or penalties as a result of the suspension, reference to the suspension must be removed from the child's records. The finding must be made within 15 days of the conference. §120.13(1)(b), Stats.

The State Superintendent of Public Instruction does not have authority to review suspensions. See *Madison Metropolitan School District (Lenny G.) v. Wis. DPI*, 199 Wis. 2d 1, 543 N.W. 2d 843 (1995).

4. Do students who are suspended have a right to make up work missed during the suspension?

Yes. No public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences or suspensions from school. The school's attendance policy shall specify the conditions under which a pupil may be permitted to take examinations missed during absences, other than suspensions, and the conditions under which a pupil shall be permitted to take any quarterly, semester or grading period examinations and complete any course work missed during a period of suspension. §118.16(4)(b) and §120.13(1)(b), Stats.

5. May a student be removed from a particular class without being expelled or suspended from school?

Yes, a teacher may remove a pupil from the teacher's class if the pupil violates the code of classroom conduct adopted by the school board under §120.13(1) (a), Stats. The teacher may also remove the pupil from his or her classroom if the pupil is dangerous, unruly or disruptive or exhibits behavior that interferes with the ability of the teacher to teach effectively, as specified in the code of classroom conduct. §118.16(4)(b), Stats.

Note: Special provisions govern the suspension or expulsion of a student with special education needs. For review of these provisions, see the federal special education regulations, 34 CFR 300.519 through 300.529. The Department of Public Instruction has also developed a unique internet-based system to guide schools through the discipline requirements of students.

This tool can be accessed at the DPI home page: www.dpi.state.wi.us. Click on "Disciplinary Action Advisor."

6. What is the classroom code of conduct?

Beginning in the 1999-2000 school year, school boards are required to adopt a code of classroom conduct. §120.13(1)(a), Stats. The code of conduct shall be developed in consultation with a committee of school district residents that consists of parents, pupils, members of the school board, school administrators, teachers, pupil service professionals and other residents of the district appointed by the school district.

The code of conduct may provide different standards of conduct for different schools and must include:

- A specification of what constitutes dangerous, disruptive and unruly behavior or behavior that interferes with the ability of the teacher to teach effectively.
- Any additional grounds for removal of a pupil from class.
- The procedure for determining the appropriate educational placement of a pupil who has been removed from class.
- A procedure for notifying the parent and guardian that their child has been removed from class.

7. If a teacher removes a student from class, what procedures must the teacher follow?

The teacher shall send the pupil to the school principal or his/her designee and notify the school principal or his/her designee immediately of the reasons for the removal. The teacher shall provide the principal or his/her designee, within 24 hours of the pupil's removal, a written explanation of the reasons for the removal. §118.164(2), Stats.

8. If a student is removed from class by a teacher, does the student have a right to educational services?

Yes, the principal has four placement options under §118.164(3)(a) for the student who has been removed from class:

1. The student may be placed in an alternative education program under §115.28(7)(e)1, Stats.
2. The student may be placed in another class in the school or another appropriate place in the school, as determined by the principal or his/her designee.
3. The pupil may be placed in another instructional setting.
4. The pupil may be placed back in the classroom from which he/she was removed if, after weighing the interests of the removed pupil, the other pupils in the class and the teacher, the school principal or his/her designee determines that re-admission to the class is the best or only alternative.

Note: A teacher, school board, school district administrator or their designee is not prohibited from further disciplining a pupil who has been removed from class using this procedure. §118.164(3)(b), Stats.

9. What is the school district's authority to expel a child?

The authority of a school district to expel a pupil is found under §120.13(1)(c) and §119.25, Stats. A pupil may be expelled from school:

1. If the school board finds the pupil guilty of repeated refusal or neglect to obey school rules.
2. For threatening to destroy school property by explosives.
3. For engaging in conduct while at school or under the supervision of a school authority which endangered the property, health or safety of others.
4. For conduct while not at school or while not under the supervision of school authority which endangered the property, health or safety of others at school or under the supervision of a school authority or endangered the property, health or safety of any employee or school board member in the pupil's district. Conduct that endangers a person or property includes making a threat to the health or safety of a person or making a threat to damage property.

In addition, the school board may expel from school a pupil who is at least 16 years of age or older if the school board finds that the pupil repeatedly engaged in conduct while at school or while under the supervision of school authorities that disrupted the ability of school authorities to maintain order or an educational atmosphere at school or at an activity supervised by a school authority.

Finally, a school board shall commence proceedings to expel and shall expel a pupil for at least one year for possession of firearms on school property. The board may, however, modify this requirement on a case-by-case basis. §119.25(2)(a)2., §120.13(1)(c)2m. and (e)2.b. and (g), Stats.

Note: Special provisions govern the suspension or expulsion of a student with special education needs. For review of these provisions, see the federal special education regulations, 34 CFR 300.519 through 300.529. The Department of Public Instruction has also developed a unique internet-based system to guide schools through the discipline requirements of students.

This tool can be accessed at the DPI home page: www.dpi.state.wi.us Click on "Disciplinary Action Advisor."

10. Must a district provide notice of an expulsion hearing?

Yes. The school district must send a written notice to the parent and to the pupil at least five calendar days prior to an expulsion hearing. The notice must specify the particulars of the pupil's alleged conduct warranting expulsion, must state the time and place of the hearing, and must state that the hearing may result in the pupil's expulsion. The notice must also include a list of nine other specific rights, including the places in the state statutes where the pupil expulsion laws are found. §119.25 and §120.13(1)(c), Stats.

Sample forms are available at the conclusion of the Disciplinary Action Advisor.

11. Is an expulsion hearing open to the public?

Upon the request of the pupil and, if the pupil is a minor, the pupil's parent or guardian, the hearing shall be closed. In addition, in the absence of pupil or parent request to close the hearing to the public, a school board may determine to conduct a closed hearing based on rules governing the conduct of a school board meeting.

12. How may a student or parent challenge a proposed expulsion?

The pupil and, if the pupil is a minor, the pupil's parents or guardian may be represented at the hearing by counsel. With or without an attorney, the pupil and parent have a right to question witnesses, to call witnesses and to offer other evidence or arguments of their own.

13. If a student withdraws from the district before the expulsion proceedings are completed by the school board, may the expulsion proceedings continue?

Yes, a school board may complete the expulsion proceedings even if the pupil withdraws from the school. If the school board does not complete the expulsion, §120.13(1)(f), Stats., does not apply. Please see Question 20 below for additional information.

14. May a school board expel a student for a period of time and then let the student return early if certain conditions are met?

Sections 119.25(2)(d) and 120.13(1)(h), Stats., authorize a school board to make expulsion decisions, to impose one or more early reinstatement conditions under which a pupil who is expelled from school may be reinstated to school before the end of the term of his/her expulsion. An early reinstatement condition may be: 1) a condition that a pupil is required to meet before he/she may be granted early reinstatement; or 2) a condition that a pupil is required to meet after his/her early reinstatement but before the end of the term of the expulsion specified in the pupil's expulsion order. The early reinstatement conditions must be related to the reasons for the pupil's expulsion and must be specified in the expulsion order.

The determination by an independent hearing panel or independent hearing officer regarding whether a reinstatement condition is related to the reasons for the pupil's expulsion may be appealed to the school board. The school board's decision regarding that determination is final.

If the school district administrator or his/her designee, who must be someone other than a principal, administrator or teacher in the pupil's school, determines that a pupil has met the early reinstatement conditions that he/she must meet before being granted early reinstatement, the school district administrator or designee may grant the pupil early reinstatement. The determination of the school district administrator or designee is final.

If a pupil violates an early reinstatement condition that applies after his/her early reinstatement but before the end of the term of expulsion, the school district administrator or

a principal or teacher designated by the school district administrator may revoke the pupil's early reinstatement. Administrative review of a possible revocation follows a process similar to that for appeal of a suspension. See Question 3, above. If the pupil's early reinstatement is revoked, the pupil's expulsion continues to the end of the expulsion term specified in the expulsion order, unless the pupil or, if the pupil is a minor, the pupil's parent or guardian and the school board, independent hearing panel or independent hearing officer agree, in writing, to modify the expulsion order.

A student electing not to complete the conditions for early return would be permitted to return at the end of the expulsion period without conditions.

15. May the expulsion be appealed to the State Superintendent?

Yes. The expelled pupil or, if the pupil is a minor, the pupil's parent or guardian may appeal the expulsion to the state superintendent, who must review the board's decision within 60 days after receiving the appeal. To begin such an appeal, a parent or pupil must send a letter to the state superintendent at:

Department of Public Instruction
P.O. Box 7841
Madison, WI 53707-7841

The letter should include the name of the pupil who was expelled, the name of the school district, the date of the expulsion order, and the reasons for the appeal.

16. May the student attend the public school while the state superintendent reviews the expulsion decision?

No. By state law, the school board's expulsion decision continues in effect during the state superintendent's review of an expulsion from a Wisconsin public school district. §120.13(1)(e)4.L., Stats. See Question 21 below for additional information.

17. What aspects of the expulsion decision are reviewed by the state superintendent?

In general, the state superintendent reviews the record of the expulsion proceeding to ensure that all procedural requirements have been followed.

18. What aspects of the expulsion decision are NOT reviewed by the state superintendent?

In general, the state superintendent will not review whether the board should have expelled for the specified conduct in a particular case or whether the length of the expulsion is unduly harsh. The state superintendent will also not review whether the evidence supporting the expulsion outweighed evidence on the pupil's behalf, as long as the record contains some evidence supporting the board's decision.

19. Is the state superintendent's decision always final?

No. The state superintendent's decision may be appealed within 30 days to the circuit court in the county in which the school is located.

20. If a pupil is expelled from one district, may he/she relocate and attend school in another district?

A school district is not required to enroll a student during the term of his/her expulsion from another Wisconsin school district. Upon request, the school district that expelled the pupil shall send the requesting district a copy of the expulsion findings and order, a written explanation of the reasons why the pupil was expelled and the length of the term of the expulsion. §120.13(1)(f), Stats. A school district has the authority to choose to enroll a student expelled by another Wisconsin school district.

Note: Special provisions govern the suspension or expulsion of a student with special education needs. For review of these provisions, see the federal special education regulations, 34 CFR 300.519 through 300.529. The Department of Public Instruction has also developed a unique internet-based system to guide schools through the discipline requirements of students. This tool can be accessed at the DPI home page: <http://www.dpi.state.wi.us>. Click on "Disciplinary Action Advisor."

Note: Additional information can be obtained in the article "Expulsion for Firearm Possession" in the May 1999 issue of *Wisconsin School News*.

21. If a student is expelled from a private school, may he/she enroll in a public school district?

Yes. A public school may not refuse to enroll a pupil residing in the district based upon the pupil's expulsion from a private school.

22. If a student is expelled from a district and enrolls in a private school, does he/she have a right to transportation to the private school?

The school district would be required to transport the pupil under the requirements governing the transportation of other private school pupils in the district. In general, a district must transport a pupil to a private school if the private school is two or more miles from the pupil's residence and is located within the district or not more than five miles beyond the boundaries of the district.

23. Does a pupil have a right to educational services from the school district during a period of expulsion?

In general, expulsion from a Wisconsin public school district removes a pupil's right to receive a free public education from any Wisconsin public school district. Many districts choose to offer some type of educational services during periods of expulsion.

Special provisions govern the suspension or expulsion of a student with special education needs. For review of these provisions, see the federal special education regulations, 34 CFR 300.519 through 300.529. The Department of Public Instruction has also developed a unique internet-based system to guide schools through the discipline requirements of students, including special requirements related to special education.

This tool can be accessed at the DPI home page: <http://www.dpi.state.wi.us>. Click on "Disciplinary Action Advisor."

24. Must an adult who has a school-age child under his/her control still comply with the compulsory education law even if the child has been expelled?

There is no law that exempts a child who has been expelled from the requirement to attend school under §118.15(1)(a), Stats. However, as a practical matter, it is unlikely that a prosecutor would bring such a case against a parent of an expelled student. Alternative options include enrollment in a private school, correspondence school, technical college or home-based private educational program.